

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

JANUSZ AUGUSTYNISKI &)
BERNADETTE AUGUSTYNISKI,)
)
)
 Plaintiffs,) Case No.: 2:22-cv-00103
and)
)
HOME DEPOT U.S.A., INC. a/k/a HOME)
DEPOT STORE #2036 LOCATED AT 1624)
E. 165TH Street Hammond, IN 46320 and)
ASSEMBLERS, INC.,)
)
 Defendants.)

NOTICE OF REMOVAL

NOW COMES the Defendant, HOME DEPOT U.S.A., INC., by and through its attorney Eric C. Papier, of McVEY & PARSKY, LLC, and in accordance with 28 U.S.C.A. 1332, 1441 and 1446, hereby provides notice of its removal of this cause for the following reasons:

1. On or about March 19, 2022, there was commenced and is now pending in the Superior Court of Lake County, Indiana, in Hammond, Indiana, a certain civil action under Case No. 45D05-2203-CT-000288 in which Janusz Augustynski and Bernadette Augustynski are the Plaintiffs, and Home Depot U.S.A., Inc. (incorrectly sued as, "Home Depot, U.S.A., Inc. a/k/a Home Depot Store #2036 Located at 1624 E. 165th Street Hammond, IN 46320") and Assemblers, Inc. are the Defendants. (See Plaintiffs' Complaint and Demand for Trial by Jury attached herein as part of Exhibit A to Notice of Removal)

2. The aforementioned lawsuit is brought by the Plaintiffs under four (4) counts seeking damages for injuries under a premises liability theory. The Plaintiffs' Complaint merely prays for judgment "in an amount that is fair and reasonable."

3. Plaintiffs allege that Janusz Augustynski fell to the floor and hit his head, neck, back, shoulders and arms. As a result of his injuries, Plaintiffs claim Janusz Augustynski was “injured, disabled, incurred medical, hospital, diagnosis-related, therapy, transportation and substitute assistance expense or costs and lost income.” Before filing suit, Plaintiffs’ counsel stated that Janusz Augustynski’s head, neck and back injuries included severe nerve damage and the need for multiple procedures/surgeries for nerve block and radio ablation in the cervical and lumbar areas. Plaintiffs’ counsel indicated that Janusz Augustynski’s medical bills totaled over \$135,000. As such, the amount in controversy will exceed \$75,000.

4. Defendant HOME DEPOT U.S.A, INC. states that the above lawsuit involves a controversy with complete diversity of citizenship between citizens of different states, and Defendant HOME DEPOT U.S.A., INC. affirmatively states further:

- (a) Upon information and belief, Plaintiffs were at the commencement of this action, and are now, citizens of the State of Indiana, and are residents of the State of Indiana, and are not citizens of the State of Delaware, the State of Georgia or the State of Tennessee.
- (b) The Defendant, HOME DEPOT U.S.A., INC., is a corporation duly created and organized by and under the laws of the State of Delaware with its principal place of business in the State of Georgia, and was not and is not a corporation created or organized under the laws of the State of Indiana, nor does it have its principal place of business in the State of Indiana.
- (c) The Defendant, ASSEMBLERS, INC., is a corporation duly created and organized by and under the laws of the State of Tennessee with its principal place of business in the State of Tennessee, and was not and is not a corporation created or organized under the laws of the State of Indiana, nor does it have its principal place of business in the State of Indiana.
- (d) “Home Depot, U.S.A., Inc. a/k/a Home Depot Store #2036 Located at 1624 E. 165th Street Hammond, IN 46320” is not a separate legal entity, and the Defendant HOME DEPOT U.S.A., INC, operates the Home Depot store located 1624 E. 165th Street, Hammond, Indiana.

5. This matter involves a controversy between plaintiffs who are citizens of the State of Indiana and defendant corporations incorporated and organized pursuant to the laws of a State other than Indiana, and who have their principal places of business in a State other than Indiana. Further, the amount in controversy, exclusive of interest and costs, satisfies the jurisdictional amount requirement. Accordingly, the District Court for the United States has original jurisdiction over this lawsuit.

6. This Notice of Removal is timely filed within thirty (30) days of service which was on or about March 24, 2022. (See U.S. Mail proof delivery to Home Depot U.S.A., Inc. showing date of service)

7. Attached hereto, and made a part hereof, are copies of the following documents filed by the Plaintiffs and the Defendants in the Superior Court of Lake County, Indiana under Case No. 45D05-2203-CT-000288:

- Plaintiffs' Summons to each Defendant;
- Plaintiffs' Complaint for Damages and Demand for Jury Trial;
- Plaintiffs' Appearance;
- U.S. Mail proof of delivery forms filed by Plaintiffs (one of which shows the date of service to Home Depot U.S.A., Inc. as March 24, 2022);
- Defendants' Appearances;
- Defendant Assemblers, Inc.'s Motion for Extension of Time to Respond and the Court's Order granting same; and
- Defendant Home Depot U.S.A., Inc.'s Notice of Appearance and Automatic Extension of Time and the Court's Order regarding same.

8. Defendant ASSEMBLERS, INC. joins and consents to removal.

9. Notice of the filing of this Removal has been given to all parties as required by law.

A true and correct copy of this Removal has been filed with the Clerk of the Lake County Superior Court, Indiana, as provided by law.

10. The Defendant, HOME DEPOT U.S.A., on removal, demands this case be tried by a jury.

WHEREFORE, the Defendant, HOME DEPOT U.S.A., INC., prays that it may affect removal of the within action from the Superior Court of Lake County, Indiana, to the United States District Court for the Northern District of Indiana – Hammond Division, and that the matter be tried before a jury.

Respectfully submitted,

HOME DEPOT U.S.A., INC.

By: /s/ Eric C. Papier
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 22, 2022, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notice of Electronic Filing:

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